

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

JONATHAN MONSARRAT,

Plaintiff,

v.

BRIAN ZAIGER dba
ENCYCLOPEDIADRAMATICA.SE,

Defendant.

CIVIL ACTION NO. 17-cv-10356-PBS

REQUEST FOR ORAL ARGUMENT

**MOTION WITH INCLUDED MEMORANDUM TO FILE EXHIBITS C AND D TO
AMENDED COMPLAINT UNDER SEAL**

Plaintiff Jonathan Monsarrat hereby respectfully requests pursuant to Local Rule 7.2 that this Honorable Court allow him to file Exhibits A and B to his Proposed First Amended Complaint under seal. In support of such Motion, the Plaintiff states that on October 18, 2017 he filed his Motion for Leave to Amend Complaint (“Motion to Amend”) [ECF No. 43]. The proposed Amended Complaint includes a number of exhibits, two of which Plaintiff omitted from the Amended Complaint as filed, ECF 43-1, as they are of a sensitive nature.

Specifically, the Plaintiff seeks an order allowing him to file Exhibits C and D to the Amended Complaint under seal. Each exhibit is a page initially published on the Encyclopedia Dramatica website on October 31, 2011, then after being taken down re-published on the Encyclopedia Dramatica website on or about as of October 22, 2012 where it remained through at least May 13, 2013.

The page explicitly references pedophilia including internet shorthand terms Pedo and Pedobear and at the bottom of the page is an advertisement for the porn site, F—ckbook.com™ featuring images that are, or appear to be, of minors engaging in sexually explicit conduct.

The Proposed Amended Complaint alleges, upon information and belief that Defendant Zaiger arranged for this porn site to place advertisements on his website pages referencing pedophilia or the internet shorthand terms, Pedo and/or Pedobear targeting potential visitors to the porn site who are interested in sexual exploitation of young girls.

18 U.S.C. § 2252A authorizes criminal prosecution for speech that knowingly “advertises, promotes, presents, distributes or solicits” dissemination of child pornography. *U.S. v Williams*, 553 US 285, 294-95 (2008). The verb “Promotes,” ... is most sensibly read to mean the act of recommending purported child pornography to another person for his acquisition.” *Id.* Because “an ordinary person” viewing the pornsite advertisement on the Encyclopedia Dramatica “jonmon” page “would conclude that the depiction is of an actual minor engaged in sexually explicit conduct,” it is immaterial whether any one or more of the three young females engaging in sexually explicit conduct is in fact a minor. 18 U.S.C. § 2256; see *U.S. v Williams*, 553 U.S. at 294-97.

Given the nature of the materials that compose Exhibits C and D, respectively, good cause exists for them to be filed under seal, as further dissemination of them *may* implicate 18 U.S.C. § 2252A or other applicable law. Likewise, good cause exists for the same to be sealed until further order of the Court as there is no timeframe under which it would be appropriate to make such materials available to the public.

WHEREFORE the Plaintiff requests the Court to grant his motion and allow for the filing of Exhibits C and D to the Proposed Amended Complaint under seal, and for the same to remain under seal until further order of the Court.

PLAINTIFF REQUESTS ORAL ARGUMENT ON THIS MOTION.

Respectfully submitted,

JONATHAN MONSARRAT,

Plaintiff,

By his attorney,

ss/ Richard A. Goren

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CERTIFICATE OF COMPLIANCE WITH LOCAL RULE 7.2

I hereby certify that on October 17 and 18, 2017, I conferred by email with the defendant's counsel and attempted in good faith to resolve or narrow the issues.

/s/ Richard A. Goren

CERTIFICATE OF SERVICE

I hereby certify that this document filed through the ECF system will be sent electronically to the registered participants as identified on the Notice of Electronic Filing (NEF), on October 18, 2017.

/s/ Richard A. Goren